84-310

No.

In the Supreme Court of the United States

October Term, 1984

In the Matter of:

Attorney Robert J. Snyder.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTION PRESENTED

1. Whether the disciplinary procedures of the Court of Appeals afford an attorney due process of law as envisioned by the Constitution of the United States.

2. Whether the disciplinary procedures of the Court of Appeals can constitutionally abrogate the First Amendment rights of Attorney Robert J. Snyder.

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The undersigned attorneys, on behalf of Petitioner Robert J. Snyder, petition for Writ of Certiorari for review of the judgments of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A, *infra*, pp. A1-A14) is reported at 734 F.2d 334 (8th Cir. 1984). This initial decision was a response to the court's own order to show cause why Attorney Robert J. Snyder should not be suspended from practice in the Federal Courts.

The second opinion of the Court of Appeals (App. B, *infra*, pp. A15-A22) is not yet reported. The second decision was a response to a petition for rehearing of the original order. A review is being sought with respect to both decisions.

JURISDICTION

The decisions of the Court of Appeals (App. A and B, *infra*, pp. A1-A22) were filed April 13, 1984, and May 31, 1984. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

STATUTES AND RULE INVOLVED

1. U.S. Constitution, Amendment I provides:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of people peaceably to assemble, and to petition the government for redress of grievances."

2. U.S. Constitution, Amendment V provides in pertinent part:

"No person shall . . . be deprived of life, liberty and property without due process of law. . . ."

STATEMENT

In March of 1983, Attorney Robert J. Snyder was appointed to represent a defendant under the Criminal Justice Act by the District Court, District of North Dakota. After the criminal proceedings were completed, Attorney Snyder, pursuant to §3006A(d)(4) of the Criminal Justice Act, submitted to the District Court a claim for services and expenses. The claim was reduced by the District Court and the modified request was then approved and sent to the Circuit Court.

Under the Criminal Justice Act, the Chief Judge of the Circuit Court must review and approve any expenditures for compensation in excess of the $1,000.00 limit. 18 U.S.C. §3006A(d)(3). Attorney Snyder's application was deemed to be deficient by the Chief Judge of the Circuit Court, and the claim was returned to the District Court with requests that additional information be provided. The claim application was supplemented by Attorney Snyder and returned to both the District Court and ultimately the Court of Appeals. Once again, the application was returned by the Chief Judge of the Circuit Court, indicating that the claim still did not comply with the Criminal Justice Act guidelines, and requested further documentation.

After discussing the matter with the secretary of the District Court, and at her suggestion, Attorney Snyder sent to the secretary of the District Court a letter dated October 6, 1983, which letter later became the basis for suspension. In that letter, Attorney Snyder indicated that he was responding to the request of the administrative personnel of the Eighth Circuit Court (App. C, *infra*, pp. A25-A26).

In the letter to the secretary of the District Court, Attorney Snyder indicated among other things that he was "appalled" at the small amounts paid to attorneys for indigent criminal defense work. He indicated his displeasure at the "extreme gymnastics" required to receive "puny amounts", and declared:

"We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it".

The letter was concluded by Attorney Snyder stating that he was "extremely disgusted" by the treatment of

him by the Court of Appeals, and that he wished to be taken off the list of attorneys willing to accept appointment in such cases, and stated further that he had "simply had it" (App. C, *infra*, p. A26).

The letter of Attorney Snyder addressed to the Secretary of the District Court was ultimately sent to the Court of Appeals. Upon receipt of this information, the Chief Judge of the Circuit Court requested that the District Court confer with Attorney Snyder to determine if Snyder would retract what it perceived to be "disrespectful remarks to the Court". In a letter dated November 3, 1983, the Chief Judge of the Circuit Court observed that:

> ". . . in view of the letter that Mr. Snyder forwarded, I question whether he is worthy of practicing law in the Federal Court on any matter. It is my intention to issue an order to show cause as to why he should not be suspended from practicing in any federal court in this circuit for a period of one year." (App. D, *infra*, p. A29).

On December 22, 1983, the Circuit Court issued an order to show cause why Attorney Snyder should not be suspended from the practice of law in the federal courts for his refusal to offer services under the Criminal Justice Act and to comply with "relevant guidelines". There was a request by Attorney Snyder for a hearing before the full court, *See* Fed.R.App.P. 46(c). However, the matter was referred to a panel which was headed by the Chief Judge of the Circuit Court, who was the same individual who directed that an order to show cause be issued in the first place (App. E, *infra*, pp. A30-A31).

The order to show cause was directed at the perceived refusal by Attorney Snyder to represent indigent criminal

defendants under the Criminal Justice Act, 18 U.S.C. §3006A. The order to show cause which was signed by the Chief Judge of the Circuit Court directed that Attorney Snyder show cause why he should not be suspended from practice for his refusal to participate under the Criminal Justice Act (App. E, *infra*, pp. A30-A31).

As a result of that specific directive, Attorney Snyder prepared a lengthy response which included copies of the Criminal Justice Act for the District of North Dakota, which had previously been approved by the Eighth Circuit Court of Appeals, showing that under the provisions of the plan and its implementations, his stated refusal to serve as counsel for indigents was allowed from the time the Act was implemented to date. In fact, the statistics of the district indicated that approximately 200 of some 275 lawyers in the southwestern division of the District of North Dakota had also, for various reasons, chosen not to serve on the panel.

The hearing was scheduled before a three judge panel, which included the Chief Judge of the Circuit Court. Attorney Snyder, upon being advised that the panel included the Chief Judge of the Circuit Court, did enter a written demand that the Chief Judge remove himself because of his involvement in the matter through letters to the federal judges in the District of North Dakota and specifically the letter of November 3, 1983, to the District Court. This demand was refused, and Chief Judge Lay served on the panel.

The hearing upon the order to show cause was held before a three judge panel on February 16, 1984, at which time Attorney Snyder appeared pro se. The original return which was filed by Attorney Snyder was in direct response to the order to show cause, and explained the basis and reason that Attorney Snyder could not be sus-

pended for having determined that he would not serve on the panel for indigent defendants. Nothing was included in the return regarding Mr. Snyder's guaranteed First Amendment rights of free speech because the order to show cause did not mention or direct that he show cause why he should not be suspended because of the content of his letter directed to the Secretary of the District Court.

At the hearing on February 16, 1984, the discussion centered upon the content of the letter rather than upon the refusal by Attorney Snyder to continue serving on the Criminal Justice Act panel.

At the conclusion of the hearing, the panel advised Attorney Snyder that he would be suspended from practice in the federal courts unless, within ten days, he submitted a letter to the Court indicating that (1) he would agree to serve on the panel on a newly revised plan; and (2) that when so serving he would comply with the guidelines in effect for the submission of billings for his services; and (3) that he would retract or apologize for the language contained in the October 6, 1983, letter directed to the Secretary of the District Court.

Attorney Snyder agreed to items 1 and 2, and sent such a letter to the Chief Judge of the Circuit Court. However, he refused to either retract or apologize for the remarks in his October 6, 1983, letter. Accordingly, on April 13, 1984, Chief Judge Lay authored an opinion for the panel which stated:

> "We find that Robert Snyder shall be suspended from the practice of law in the federal courts of the eighth circuit for a period of six months; thereafter, Snyder should make application to both this court and the federal district court of North Dakota to be readmitted."

A petition for rehearing was filed on behalf of Attorney Robert J. Snyder, which produced a second opinion by the Court of Appeals (App. F, *infra*, pp. A32-A42). Within the order denying the petition for rehearing en banc, the Court of Appeals addressed several issues which had not been addressed in the April 13, 1984, opinion. Specifically, with respect to the argument of the failure to afford due process of law, the Court of Appeals stated:

> "Second, it is abundantly clear from the record that Snyder had notice that his disrespectful letter could be a basis for discipline. Snyder was given at least three opportunities to apologize for the letter, and declined to do so."

The Court of Appeals also addressed the issue of free speech. In that regard, the Court of Appeals declared:

> "Snyder urges that he should not be disciplined for exercising his First Amendment rights to criticize, and express frustration, toward the Court. The gravamen of the situation is that Snyder in his letter became harsh and disrespectful to the court. It is one thing for a lawyer to complain factually to the court; it is another for counsel to be disrespectful in doing so."

The rehearing en banc was denied, with two of the judges of the Eighth Circuit voting to grant the petition. The Court of Appeals conditionally vacated the order of suspension and provided an additional ten days from the date of the order denying rehearing en banc to allow Attorney Snyder to provide

> "a sincere letter of apology to this court for disrespectful comments directed to the court in his letter of October 6, 1983, . . ."

The clerk was directed that if there was a failure to comply with that request, that the original order of suspension would be reinstated with the six month suspension to run from the date of the original order.

REASONS FOR GRANTING THE PETITION

The order to show cause which was issued in December of 1983 specifically stated that Attorney Snyder was to show cause why he should not be suspended from the practice,

> "for such a period of time as his refusal to serve continues. . . ." (App. E, *infra*, p. A31).

In the opinion issued by the Court of Appeals on April 13, 1984, the panel of the Court of Appeals, in discussing why Attorney Snyder was ordered to show cause why he should not be suspended from practice in the Federal Courts, declared:

> "Attorney Snyder has been cited: (1) for his refusal to continue to perform services in indigent cases under the Criminal Justice Act (CJA), 18 U.S.C. §3006A (1982); and (2) for his disrespectful refusal to comply with the guidelines under the CJA relating to the submission of expenses and attorney fees."

That was not, however, the language contained in the show cause order.

It also became obvious at the time of the show cause hearing on February 16, 1984, that the matters discussed by the panel of the Court of Appeals were vastly different than the matters contained in the specific language that was in the show cause order which had been sent to Attorney Snyder. The language of the order to show

cause made absolutely no mention of any "disrespectful refusal to comply" with the guidelines of the Criminal Justice Act. Additionally, it is clear from the language of the opinion of the Court of Appeals that the basis for the court's ordering the suspension of Attorney Snyder was for his refusal to "offer a retraction and sincere apology for his disrespectful remarks rendered in his letter of October 6." (App. A, *infra*, pp. A3-A4).

The initial opinion of the Court of Appeals on the order to show cause authored by Chief Judge Lay includes the statement:

> ". . . without hesitation, we find Snyder's disrespectful statements as to this court's administration of CJA *contumacious* conduct."

It then follows in the next paragraph that he is ordered suspended by the Court of Appeals.

Attorney Snyder has been denied his First Amendment rights and due process of law in that the order to show cause was not directed to the language contained in the letter of October 6, 1983, and therefore in his return to the order to show cause, he made no reference to the letter, nor made any argument with respect to it. It is submitted that if the original order to show cause had stated that Attorney Snyder was to show cause why he should not be suspended from practice because of statements contained in the October 6, 1983, letter, the return to the order to show cause filed by Attorney Snyder would have made reference to the First Amendment to the United States Constitution and other decisions regarding freedom of speech.

It is further submitted that Attorney Snyder has been suspended because of the content of the October 6, 1983, letter, without having had the due process of law

afforded to him by the United States Constitution. He has not been afforded (1) proper notice of the reasons for the proposed suspension from practice; (2) an opportunity to be heard on the specific charge that his letter was disrespectful, and that its contents would justify suspension of his privileges to practice; and (3) there was no hearing provided with respect to the assertion that the October 6, 1983, letter was a basis for suspension of his privileges to practice before the Court of Appeals and the Federal Courts. Attorney Snyder was not advised in the order to show cause that the matters contained in the October 6, 1983, letter were to serve as the basis for a possible suspension and, therefore, he did not have an opportunity to appropriately respond to those allegations.

Additionally, it is submitted that the Chief Judge of the Court of Appeals should have excused himself in consideration of this matter because of the provisions of 28 U.S.C. §455, which states in pertinent part as follows:

"*Disqualification of justice, judge, or magistrate*:

(A) Any justice, judge, . . . of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned.

(B) He shall also disqualify himself in the following circumstances:

a. Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . ."

The language of the statute was also a part of Canon 3C of the *Model Rules of Professional Conduct* and *Code of Judicial Conduct*, which states in pertinent part as follows:

"(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, included but not limited to instances where:

a. He has a personal bias or prejudice concerning a party, or personal knowledge of the disputed evidentiary facts concerning the proceeding; . . ."

It is submitted that the Chief Judge's initial involvement in the matter before the issuance of the order to show cause falls within the provisions of 28 U.S.C. §455, in that he did have personal knowledge of the facts concerning the proceedings. By sitting on the panel after he initially indicated in his letter that he questioned whether Mr. Snyder was "worthy of practicing law in the federal courts on any matter", the Court again deprived Attorney Snyder of due process of law as guaranteed by the United States Constitution. Attorney Snyder did request that the Chief Judge excuse himself; however, the Chief Judge did not excuse himself, and in fact sat as the Chief Judge of the panel in February, 1983, and subsequently wrote the opinion which suspended Attorney Snyder for a period of six months.

The order of suspension should also be set aside because to order the suspension of Attorney Snyder because of his comments in the October 6, 1983 letter, would and does violate his First Amendment rights.

It is apparent from the original decision of the Court of Appeals that the suspension of Attorney Snyder is entered, not on the grounds set forth in the order to show cause, but because of the language contained in the October 6, 1983 letter, which was solicited by the Secretary of the District Court and sent to her. If that is to be the basis of the disbarment, it is necessary to

address the First Amendment freedom of speech rights that lawyers and all other persons are entitled to under the First Amendment to the United States Constitution.

In the October 6, 1983, letter, Attorney Snyder complained to the District Court secretary about problems he had encountered in the representation of indigents in the District Court. The letter was written at the secretary's suggestion. It vented a frustration of a practicing attorney towards a system which is not perfect.

Under the protections of the First Amendment, Attorney Snyder had the right to say what he did in the October 6, 1983, letter, without fear of reprisal. In the cases dealing with the subject of First Amendment rights, it is made clear that truthful criticism is protected by the First Amendment, subject to regulation only to the extent that it presents a clear and imminent threat to the fair administration of justice or involves conduct disruptive of the judicial proceeding. See *Craig v. Harney,* 331 U.S. 367 (1947); *Pennekamp v. Florida,* 328 U.S. 331 (1946); *Bridges v. California,* 314 U.S. 352 (1940).

Regarding the constitutional standard applicable to the regulation of attorney's extrajudicial criticism of the judiciary, this court in *Bridges v. California, supra,* explained that clear and present danger,

> ". . . (I)s a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." *Bridges v. California,* 314 U.S. 352, 363 (1940).

See also, *In Re*: *Hinds,* 449 A.2d 283 (NJ 1983).

A private letter written to the local federal district court judge's secretary does not rise to the level that it

can be said to be an imminent threat to the fair administration of justice or disruptive of a judicial proceeding.

While there is a reasonable restriction of freedom of speech within the court system, the communication of Attorney Snyder in his October 6, 1983, letter was not within the system. It is analogous to the situation found in *U.S. v. Grace,* 103 S.Ct. 1702 (1983), that situation involving picketing around the Supreme Court Building; and it was not considered by this court to be a comment *in* court, or directed to the court.

The comments of Attorney Snyder were in fact reasonable comments; they were not malicious, nor did they bring scorn upon the Court of Appeals or the District Court of the District of North Dakota. The situation found in *U.S. v. Grace* is not unlike that faced by Attorney Snyder. To find as the Court of Appeals did that Attorney Snyder could be suspended for what is said in the October 6, 1983, letter is a direct violation of his freedom of speech. There is no compelling government interest which is served by restricting the expression of individuals such as Attorney Snyder in commenting upon the Criminal Justice Act and its perceived failings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated this 31st day of July, 1984.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-8017

In the Matter of:)
Attorney Robert J. Snyder.)
On Order to
Show Cause.

Submitted: February 16, 1984
Filed: April 13, 1984

Before LAY, Chief Judge, HEANEY and ARNOLD, Circuit Judges.

LAY, Chief Judge.

This case comes before us on an order issued to attorney Robert Snyder of Bismarck, North Dakota, to show cause why he should not be suspended from practice in the federal courts. Attorney Snyder has been cited: (1) for his refusal to continue to perform services in indigent cases under the Criminal Justice Act (CJA) 18 U.S.C. §3006A (1982); and (2) for his disrespectful refusal to comply with the guidelines under the CJA relating to the submission of expenses and attorney fees.

Facts.

On March 14, 1983, Attorney Snyder was appointed by Judge Bruce Van Sickle of the District of North Dakota to represent an indigent defendant under the CJA. There is no issue concerning his services being performed competently. After the proceedings, pursuant to § 3006A (d)(4) of the CJA, Attorney Snyder submitted to the district court a claim for services and expenses in the amount of $1,898.55. On August 17, the district court judge reduced the claim by $102.50 and approved the modified request.

Under the CJA, the chief judge of this court must review and approve any expenditures for compensation in excess of the $1,000 limit. 18 U.S.C. § 3006A(d)(3). Snyder's application was deficient in that the CJA requires an attorney to attach a memorandum of hours expended and an itemized list of expenses.[1] Snyder did not attach the necessary information to his application. Accordingly, his application was returned to the district court with the request that Attorney Snyder provide the proper attachments. Thereafter, Snyder returned the application to the secretary of the district judge with a monetary, not an hourly, breakdown of his time and again without the requested itemization of expenses.[2] Once again his application was returned by the chief judge with the notation that compliance with the CJA guidelines was still necessary to process the application.

Snyder then sent to the district judge's secretary a letter, dated October 6, "for the purpose of responding to"

1. *Guidelines for the Administration of the Criminal Justice Act*, Ch. 2 §3, Vol. VII, Guide to Judiciary Policies & Procedures.

2. Snyder's note accompanying the returned application stated that "the amounts [on the time sheet] aren't exactly right due to our computer's lack of the right money codes."

the chief judge's request. Snyder stated that he was "appalled" at the small amount paid to attorneys for indigent criminal defense work. He indicated his displeasure at the "extreme gymnastics" required to receive "puny amounts." He then stated to the court: "We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it." Snyder concluded his letter by stating that he was "extremely disgusted" by the treatment of him by the Eighth Circuit, that he wished to be taken off the list of attorneys willing to accept appointment in indigent cases, and that he had "simply had it."[3]

Upon receipt of this information, the chief judge requested the district court to confer with Snyder and to determine if Snyder would retract his disrespectful remarks to the court. Snyder refused. On December 22, 1983, this court issued an order to show cause why he should not be suspended from the practice of law in the federal courts for his refusal to offer services under the CJA and to comply with relevant guidelines. Snyder requested a hearing by the full court. *See* Fed. R. App. P. 46(c). The full court voted to refer the matter to a panel.

At oral argument, Attorney Snyder was requested once again to purge himself, as an officer of the court, by agreeing to accept appointment under the Act and by otherwise complying with the Act's guidelines. The panel also requested him to demonstrate in writing that he would be respectful in his relations with the federal courts and to offer a retraction and sincere apology for his disrespectful remarks rendered in his letter of October

3. Based upon his refusal to comply with the CJA guidelines, Snyder was denied excess attorney fees and denied unitemized expenses.

6. Snyder conditionally offered his continued services under the CJA, but contumaciously refused to retract his previous remarks or apologize to the court.

Attorney Snyder's Remarks to the Court

We first turn to Snyder's refusal to comply with the guidelines under the CJA for documentation of expenses. An integral part of Snyder's refusal to comply with CJA guidelines was his explicit statement of disrespect to the federal court. Snyder's conduct not only constituted disrespect but served as well to impede the orderly processing of attorney fee applications. In this direct sense he has served to impede the administration of justice.

As a member of the North Dakota bar and as a licensed practitioner in both the federal district court and the court of appeals, Attorney Snyder is bound by the ethical canons of the legal profession.[4] The relevant disciplinary rule states: "A lawyer shall not: . . . Engage in conduct that is prejudicial to the administration of justice." The Model Code of Professional Responsibility, DR 1-102(A)(5).[5] Equally important is the recognition that an attorney must maintain the proper respect for the court as an institution. As stated in the Model Code:

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4. The ethical code adopted by each state defines the professional responsibility of every attorney who is a member of that state's bar. However, as a federal court, our authority to discipline Attorney Snyder is defined in Fed. R. App. P. 46(c):

> Disciplinary Power of the Court over Attorneys. A court [of] appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

5. Although the American Bar Association has recently adopted new Model Rules of Professional Conduct, the older Model Code of Professional Responsibility is still in effect in North Dakota (the state in which Attorney Snyder practices).

> Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

Id. at EC 9-6.

As we will discuss, Snyder now conditionally has offered to serve in indigent cases and to comply with the CJA guidelines. However, in a letter to the court he has otherwise refused to retract or apologize for his disrespectful remarks to the court. He asserts that, although his remarks were "harsh," as a "matter of principle" no further statement is due the court. Letter from Robert J. Snyder to Chief Judge Lay (February 27, 1984).

We find Snyder's present statement that he will conditionally comply with the guidelines not enough. His refusal to show continuing respect for the court and his refusal to demonstrate a sincere retraction of his admittedly "harsh" statements are sufficient to demonstrate to this court that he is not presently fit to practice law in the federal courts. All courts depend upon the highest level of integrity and respect not only from the judiciary but from the lawyers who serve in the court as well. Without public display of respect for the judicial branch of govern-

ment as an institution by lawyers, the law cannot survive.[6] This is not to say that courts cannot and should not be subject to proper criticism and comment; however, when an attorney becomes disrespectful in response to a court's request that counsel comply with a congressional mandate, then we deal with a different matter. Without hesitation we find Snyder's disrespectful statements as to this court's administration of CJA contumacious conduct. We deem this unfortunate.

We find that Robert Snyder shall be suspended from the practice of law in the federal courts of the Eighth Circuit for a period of six months; thereafter Snyder should make application to both this court and the federal district court of North Dakota to be readmitted.

Implementation of the CJA in North Dakota

In further response to the show cause order Attorney Snyder alleges that the implementation of the CJA in North Dakota relies exclusively on an attorney list of those "willing" to serve. He therefore asserts that his refusal to accept any future CJA cases was in compliance

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6. It is not respect for the judge personally that is required of attorneys; it is respect for the legal institution that the judge represents. As the Supreme Court of Pennsylvania recently stated:

> The "law" is given corporeal existence in the form of the judge. When carrying out the judicial function, the judge becomes a personification of justice itself. When presiding over any aspect of the judicial process, the judge is not merely another person in the courtroom, subject to affront and insult by lawyers. "The obligation of the lawyer to maintain a respectful attitude toward the court is 'not for the sake of the temporary incumbent of the judicial office,' but to give due recognition to the position held by the judge in the administration of the law." ABA Standards, The Defense Function, § 7.1, Commentary at 259. The judge is the court, and a display of insolence and disrespect to him is an insult to the majesty of the law itself.

Commonwealth of Pennsylvania v. Rubright, 414 A.2d 106, 110 (Pa. 1980).

with the plan and that he should not be censured for his lack of willingness to serve any more than the vast number of lawyers within the district who were not on the list by reason of their unwillingness to serve. Second, Snyder asserts that, because he lives in a rural area with a smaller population and his firm is willing to try criminal cases, whereas the vast number of lawyers in the district are not so willing, his firm receives a disproportionate number of appointments under the CJA. He also protests that the statutory fee under the CJA is inadequate to compensate him even for his overhead. Third, Snyder complains that the North Dakota list of attorneys willing to serve is not a current list; it does not include lawyers newly admitted to the bar and includes a number of lawyers who are deceased or inactive. He asserts, however, that he is now willing to continue to serve on the CJA panel provided that other qualified attorneys are placed on the list for appointment. We find merit in Snyder's conditional offer of service.

This court has consistently recognized the duty of an attorney practicing in the federal courts, as an implied obligation, to serve willingly as an officer of the court in a capacity *pro bono publico* (for the public good). *See, e.g., Peterson v. Nadler*, 452 F.2d 754, 758 (8th Cir. 1971). In the case of *Tyler v. Lark* we noted:

> "An applicant for admission to practice law may justly be deemed to be aware of the traditions of the profession which he is joining, and to know that one of these traditions is that a lawyer is an officer of the court obligated to represent indigents for little or no compensation upon court order. Thus, the lawyer has consented to, and assumed, this obligation and when he is called upon to fulfill it, he cannot contend that it is a 'taking of his services.' "

Tyler v. Lark, 472 F.2d 1077, 1079 (8th Cir.) (quoting *United States v. Dillon*, 346 F.2d 633, 635 (9th Cir. 1965), *cert. denied*, 382 U.S. 978 (1966)), *cert. denied*, 414 U.S. 864 (1973).

Many state courts have similarly observed that counsel must assist the court by carrying on *pro bono* representation in criminal cases. *See, e.g., Ex parte Dibble*, 310 S.E.2d 440, 441 (S.C. Ct. App. 1983) ("It has been traditionally held that a lawyer, by accepting a license to practice law, becomes an officer of the court and assumes the obligation of representing, without pay, indigent defendants in criminal cases."); *Yarbrough v. Superior Court of Napa County*, 150 Cal. App. 3d 388, ..., 197 Cal. Rptr. 737, 741 (Ct. App. 1983) ("An attorney is an officer of the court before which he or she was admitted to practice and is expected to discharge his or her professional responsibilities [to represent indigents] at all times, particularly when expressly called upon by the courts to do so."). Recently, the Supreme Court of Missouri held that attorneys licensed to practice in the state could be appointed to serve in criminal cases with no compensation:

> "The term 'profession,' it should be borne in mind, as a rule is applied to a group of people pursuing a learned art as a common calling in the spirit of public service where economic rewards are definitely an incidental, though under the existing economic conditions undoubtedly a necessary by-product. In this a profession differs radically from any trade or business which looks upon money-making and personal gain as its primary purpose. The lawyer cannot possibly get away from the fact that his is a public task. . . ."

State ex rel. Wolff v. Ruddy, 617 S.W.2d 64, 65-66 (Mo. 1981) (quoting Anton-Hermann Chroust, 1 *The Rise of the Legal Profession in America* x-xi (1965)), *cert denied*, 454 U.S. 1142 (1982).

The profession of law rests upon its commitment to public service and has long been recognized as a profession that requires its membership to engage in *pro bono* activities. Acceptance of appointment under the CJA, a service that lawyers do not perform totally without compensation, is consistent with this obligation of the members of the bar.[7] Before the CJA provided for compensation, many lawyers willingly accepted the defense of indigents in federal criminal cases without expectation of any compensation. The CJA was a recognition by Congress that indigent criminal defendants should have an opportunity to receive the services of competent counsel. Although the compensation allowed by the Act was never intended to fully recompense the lawyer for the time spent on a case, Congress intended that the amount allowed would at least approach the cost of a lawyer's overhead. It is true that the allowances awarded are much lower than the fees charged by many lawyers in non-indigent cases. However, the Act is intended to contain elements of *pro bono* work and not to be merely a government-subsidized, employment service.[8]

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7. Although some compensation is afforded an attorney under the CJA, the Act does not attempt to fully compensate an attorney for the work performed. Thus, the Act has a *pro bono* factor built into its compensation scheme. *See infra* note 8 and accompanying text.

8. The legislative history of the CJA states:

> As reported by the subcommittee, H.R. 4816 provided for compensation to court-appointed attorneys at a rate not to exceed $15 per hour for time reasonably spent, and carefully accounted for, on behalf of an impoverished defendant. This amount was conceded by virtually every witness at the hearings to be below normal levels of compensation in legal practice. It was nevertheless widely supported as a reasonable basis upon which lawyers could carry

(Continued on following page)

The North Dakota plan which contemplates that only lawyers who willingly volunteer for appointments will be assigned to indigent cases appears to rest on the Model Plan approved by the Criminal Justice Committee of the Judicial Conference.[9] Nonetheless, we find that Snyder's objections raise considerable concern as to the efficacy of any plan which depends totally upon voluntary participation.[10]

We find merit in the reasoning that there is an implied obligation to perform *pro bono* trial services on every licensed attorney who is engaged in litigation, not just those who are willing to come forward. The plan as now constituted penalizes those who specialize in criminal law because more than their share of the district's *pro bono* work falls on their shoulders; under a voluntary plan, particularly in rural areas, only a few attorneys come forward and this unduly results in a disproportion of assignments to a minority of the lawyers practicing in the district. Also, appointing only those who feel they have competence in criminal cases in no way assures competency; it is common knowledge that many counsel ap-

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Footnote continued—

> out their profession's responsibility to except [sic] court appointments, without either personal profiteering or undue financial sacrifice. . . .

H.R. Rep. No. 864, 88th Cong., 2nd Sess., *reprinted in* 1964 U.S. Code Cong. & Ad. News 2997-98. Since the enactment of the CJA, the hourly rate of compensation for attorneys has increased to $20 for preparation time and $30 for trial time.

9. "Model Plan for the Composition, Administration and Management of the Panel of Private Attorneys under the Criminal Justice Act," *Guidelines for the Administration of the Criminal Justice Act*, Vol. VII, App. G, Guide to Judiciary Policies and Procedures.

10. We note that, in districts where a federal public defender program assumes a substantial representation of indigents in criminal cases, the plan adopted may be more flexible in accepting volunteers.

pointed by district courts under the CJA are young lawyers just out of law school trying to gain early experience in the trial of cases.

Because Snyder is participating under a plan which is purely voluntary, his refusal to serve is in technical compliance with the plan. However, his conditional agreement to serve in the future, if other attorneys who are competent to try cases are included on the panel, also has considerable merit. Under the Criminal Justice Act each district is required to submit for approval its plan for implementation of the CJA to the Judicial Council of the Circuit. 18 U.S.C. § 3006A(a). We therefore refer the study as to alleged insufficiency of participation of the bar in the panels of the CJA to the district courts and the Judicial Council.

We recognize that any requirement that all active, licensed trial practitioners be eligible for appointment under the CJA raises the immediate question of competency and the continuing concern of the courts and the bar over the increasing number of suits relating to the charge of ineffective assistance of counsel in criminal cases. But in our judgment the fear of incompetent counsel being appointed is, for the most part, exaggerated.

The most common successful complaint relating to ineffective assistance of counsel is the failure of the lawyer to adequately investigate the case and to call defense witnesses. *See, e.g., United States v. Baynes*, 687 F.2d 659 (3rd Cir. 1982); *Eldridge v. Atkins*, 665 F.2d 228 (8th Cir. 1981), *cert. denied*, 456 U.S. 910 (1982); *Rummel v. Estelle*, 590 F.2d 103 (5th Cir. 1979). Competent lawyers who specialize in civil trials know that the success or failure of a trial depends on the thoroughness of the investigation of facts and of the trial preparation. This basic rule of trial prep-

aration is true for civil as well as criminal cases; the attorney who is competent to practice in civil matters is competent to appear in criminal cases. Lawyers who specialize in civil cases must necessarily engage in a diversity of study in all spheres of our social, political, and economic systems. The step across to the criminal law, by the experienced civil trial attorney, is really no step at all.

We also recognize that many civil trial lawyers are not currently conversant with the Rules of Criminal Procedure and the various rules governing the practice of criminal law.[11] Nonetheless we would deem it incumbent on the civil trial bar to become familiar with these rules, as they would any other procedural or substantive rule of law not previously encountered. Most civil lawyers are generalists; when confronted with a specialized area of litigation, they quickly master the law and the facts. Few lawyers process their first appeal to this court or to the Supreme Court of the United States without doing special study to master the new procedure at hand. We suggest that it is no more difficult to conduct a criminal trial than it is to conduct an intricate 10b-5 securities case or a complicated products-liability case.

Much of the criticism that has been leveled at the trial bar as to the lack of effective representation has focused on lawyers representing indigents in criminal

---

11. The Model Plan provides:

> Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure and the Federal Rules of Evidence.

We note, generally, that knowledge of the Federal Rules of Criminal Procedure and Federal Rules of Evidence is necessary to pass most state bars. It is reasonable to assume that a lawyer may be called upon some day to use the skills which he or she was required to demonstrate to enter the legal profession.

cases.[12] While ineffective assistance of counsel certainly can occur in appointed-counsel cases, charges of incompetency of the criminal trial bar are distorted by the placing of the burden of indigent representation totally on a small segment of the bar. Skilled and experienced civil trial attorneys, some of the best advocates in the profession, are excused from service under the CJA by the Model Plan and district plans adopted in conformity therewith. It is immaterial whether their absence is related to the lack of economic incentive to serve under the CJA or to their alleged lack of experience in the criminal field. Clearly, when such a large number of competent trial attorneys are categorically removed from participation, ser-

---

12. For example, Chief Justice Burger has expressed concern that indigents suffer most from "incompetent trial advocates." Burger, *Some Further Reflections on the Problem of Adequacy of Trial Counsel*, 49 Fordham L. Rev. 1, 8 (1980). Judge Bazelon, a distinguished jurist of the D.C. Circuit, has been critical of the competency of the criminal defense bar for years. *See, e.g.*, Bazelon, *The Defective Assistance of Counsel*, 42 U. Cin. L. Rev. 1 (1973). Our opinion disagrees with Judge Bazelon's views that civil trial lawyers are not competent to try criminal cases. Judge Bazelon states that the time and money spent by a civil lawyer in learning how to try a criminal case "would be immense" and that too many of these lawyers would have to "rediscover the wheel." He also adds that the "uptown lawyer" often has a serious communication problem with the indigent client and that they are "not prepared for the cultural shock of learning that their client is neither middle class nor cast in their image of the 'deserving poor.'"

We must respectfully disagree. There is no empirical data to support Judge Bazelon's theory. The fact is, the present system of allowing only volunteers to come forward for appointment under the CJA brings forth many inexperienced, young lawyers looking for their first case to try. Appointing only those who specialize in criminal cases conveniently shields a vast number of experienced lawyers who seek an exclusive, civil practice because of the higher monetary rewards involved. The CJA is not designed to compensate any lawyer for his or her self-education. Nonetheless, we are confident that skilled civil trial lawyers could adjust to criminal practice, first, out of the professional obligation to provide effective counsel for the defendant; and second, out of concern for the quality of representation to be found generally in our courts and our profession.

vices rendered to indigents will not consistently meet the highest standards of criminal representation. We do not believe that Congress, in passing the CJA, intended *pro bono* representations to fall upon the few; in this sense we think careful study by the district courts and the Judicial Council should be given to the idea that all active trial lawyers in the federal courts be obligated to provide *pro bono* services to the indigent either in the civil law or in the criminal defense field. *Cf. Nelson v. Redfield Lithograph Printing*, No. 83-2248 (8th Cir. Feb. 22, 1984).

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

/s/ Robert D. St. Vrain

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-8017

In the Matter of:) On Petition for
Attorney Robert J. Snyder) Rehearing En Banc.

Filed: May 31, 1984

ORDER DENYING PETITION FOR REHEARING EN BANC

Before LAY, Chief Judge, HEANEY, BRIGHT, ROSS, McMILLIAN, ARNOLD, JOHN R. GIBSON, FAGG, and BOWMAN, Circuit Judges.

HEANEY, Circuit Judge.

This matter comes before the Court on a petition for rehearing en banc. Attorney Snyder, now represented by counsel, raises several points in his petition: (1) that Chief Judge Lay should recuse himself under 28 U.S.C. § 455(b)(1) because of his personal knowledge of facts gained under the Criminal Justice Act (CJA); (2) that Snyder was not given proper notice that his allegedly disrespectful letter could be a basis for discipline; (3) that Snyder's letter of complaint was an exercise of free speech protected by the First Amendment; (4) that his letter was not disrespectful; and (5) that the district court and the court secretary encouraged Mr. Snyder in directing that the letter of complaint be sent.

Before dealing with these arguments, we think it wise to state the facts more precisely. Robert Snyder was appointed by the United States District Court for the District of North Dakota to represent 12 defendants in a period from January 1, 1979 to early 1984. It appears from the record that eight of these cases were disposed of without trial and four involved at least some court appearances. According to the records that have been furnished to this Court, Mr. Snyder devoted approximately 270 hours to these cases over a four and one-half year period.

On August 9, 1983, Mr. Snyder completed work on a case in which he had been appointed to represent an indigent, and submitted a voucher in the sum of $1,898.55 to the district court for payment. Judge Bruce Van Sickle reduced the claim by $102.50 and forwarded this voucher to this Court on August 17. On September 6, this Court returned the voucher to Mr. Snyder requesting him to submit a detailed memorandum pursuant to 22.2 B of the guidelines, and to support his claim for long distance calls by attaching an itemized statement. The voucher was returned to us on September 26, but because he did not have both the number of hours expended as well as the dollar amounts, requested by the guidelines, it was returned by this Court to Mr. Snyder on the same date. On October 20, the completed voucher was returned to this Court. Included in the return was Mr. Snyder's letter of October 6; this letter is attached hereto as Addendum No. 1. The letter stated in part:

> We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it.
>
> Further, I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and

> you are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it.

On November 3, 1983, Chief Judge Lay wrote to Judge Van Sickle the letter which is attached hereto as Addendum No. 2 A copy of this letter was sent to Mr. Snyder. In that letter Chief Judge Lay stated in part:

> I consider Mr. Snyder's letter to your secretary as being totally disrespectful to the federal courts and to the judicial system. It demonstrates a total lack of respect for the legal process and the courts.
>
> • • • •
>
> Mr. Snyder indicates that he would like to have his name removed from the list of attorneys who will be appointed to represent indigent criminal defendants. As far as the court is concerned, I will honor that request and I instruct you to remove his name from the list of attorneys who will be appointed in criminal cases. However, in view of the letter that Mr. Snyder forwarded, I question whether he is worthy of practicing law in the federal courts on any matter. It is my intention to issue an order to show cause as to why he should not be suspended from practicing in any federal court in this circuit for a period of one year. This suspension, of course, will apply to his appearance in federal court in North Dakota. We will, of course, give Mr. Snyder an opportunity to respond before any final determination is made.

On December 20, 1983, Chief Judge Lay caused to be issued the order to show cause which forms the basis of the present proceedings. A hearing on the order to show cause was held on February 15, 1983. At the hearing

to show cause, Judge Richard Arnold read excerpts of Snyder's letter of October 6 to Mr. Snyder and asked Mr. Snyder the following question: "I am asking you sir if you are prepared to apologize to the Court for the tone of your letter." Mr. Snyder responded as follows: "That is not the basis that I am being brought forth before the Court today. It is not an apology and I could have apologized when an apology was demanded from Judge Lay and I declined * * * but I did not apologize then and I am not apologizing now." Judge Arnold stated to Mr. Snyder: "I just want to get this clear that you are declining to apologize for the letter of October 6." Snyder said: "I am." At the close of the hearing the Court gave Mr. Snyder an additional ten days in which to state that he was willing and ready to represent indigent defendants, that he would comply with the guidelines, and that he would apologize to the Court for his letter of October 6.

On February 22, Snyder wrote to this Court stating:

> If and when a new Plan for the implementation of the Criminal Justice Act in the State of North Dakota is enacted, the undersigned will enthusiastically obey its mandates, just as he has obeyed the mandates, or lack thereof, in the existing Plan.
>
> Further, the undersigned states that he will make every good faith effort possible to comply with the Court's guidelines regarding the payment of attorney's fees and expenses. [*See* Addendum No. 3.]

No apology for the October 6 letter was made. Thereafter, on February 24, 1984, Chief Judge Lay wrote to Mr. Snyder giving him another opportunity to apologize. He stated: "I am confident that if such a letter is forthcoming that the Court will dissolve the order." *See* Addendum No. 4.

Mr. Snyder responded as follows:

> I am in receipt of your letter dated February 24, 1984. Please be advised that my letter of February 22, 1984 entirely states my position concerning this matter.
>
> I cannot, and will never, in justice to my conscience, apologize for what I consider to be telling the truth, albeit in harsh terms. You must therefore search your conscience and determine what course of action will best serve the interest of justice and the administration of the Eighth Circuit.
>
> It is unfortunate that the respective positions in the proceeding have so hardened. However, I consider this to be a matter of principle, and if one stands on principle, one must be willing to accept the consequences.
>
> Thank you for your time and attention.

We turn now to the arguments raised by Snyder on his petition for rehearing en banc. We deal with them seriatim.

First, it is clear that a judicial officer is not disqualified under 28 U.S.C. § 455 because of personal knowledge of facts unless the knowledge arises out of extra-judicial observation or misconduct. *See United States v. Coven*, 662 F.2d 162, 168 (2d Cir. 1981), *cert, denied*, 456 U.S. 916 (1982). Chief Judge Lay, in processing Snyder's claim and in seeking information to process the claim, was carrying out his judicial responsibilities. Any factual information gained in doing so or any judicial action taken by him as chief judge did not in any way arise, in an extra-judicial capacity. Chief Judge Lay possesses no personal bias against Snyder and properly served on the panel to hear Mr. Snyder's response to the Court's show cause order.

Second, it is abundantly clear from the record that Snyder had notice that his disrespectful letter could be a basis for discipline. Snyder was given at least three opportunities to apologize for the letter and declined to do so.

Third, Snyder's counsel states that Mr. Snyder's letter was an exercise of free speech. Snyder urges that he should not be disciplined for exercising his First Amendment rights to criticize, and express frustration toward, the Court. The gravamen of the situation is that Snyder in his letter became harsh and disrespectful to the Court. It is one thing for a lawyer to complain factually to the Court, it is another for counsel to be disrespectful in doing so.

It is well settled that disrespectful remarks by an officer of the court do not fall within the ambit of protected speech. As Justice Stewart stated: "Obedience to official precepts may require abstention from what in other circumstances might be constitutionally protected speech." *In re Sawyer*, 360 U.S. 622, 646-647 (1959) (Stewart, J., concurring).[1]

Fourth, Snyder states that his letter is not disrespectful. We disagree. In our view, the letter speaks for itself.

Snyder seeks to mitigate his conduct by stating that the district court and the district court's secretary directed

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1. *See also State v. Nelson*, 504 P.2d 211, 214 (Kan. 1972), which states:

> Concerning respondent's argument that DR 1-102(A)(5) creates an impermissible and chilling effect on "First Amendment freedoms," an examination of decisions on the point (12 A.L.R.3d, Anno., p. 1408) reveals the consensus to be that an attorney's right to free speech is tempered by his obligation to both the courts and the bar, an obligation to which ordinary citizens are not held.

that the letter be sent. It appears from the affidavit of Judge Bruce Van Sickle that he was aware of Mr. Snyder's letter to his secretary and viewed it as that of a frustrated lawyer hoping that his comments with respect to the fee schedule and the paperwork would serve as a basis for some change in the process. There is nothing in the record to indicate that Judge Van Sickle instructed Mr. Snyder to be disrespectful to this Court. Snyder wrote the letter, he is intelligent and capable of independently evaluating the ramifications of his conduct, and he must take responsibility for his own actions.

We have difficulty with the proposition that we should condone, or that anyone should approve, a lawyer's exercise of open disrespect for the court before which the lawyer practices. To repeat what we have earlier observed, "a display of insolence and disrespect to [the Court] is an insult to the majesty of the law itself." *In the Matter of: Attorney Robert J. Snyder*, No. 84-8017, slip op. at 6 n.6 (8th Cir. April 13, 1984). However, because of Snyder's past cooperation with the district court in serving on *pro bono* matters, because of his now professed willingness to continue to do so and to comply with the CJA guidelines, and because of the alleged misunderstanding as to the reasons for his suspension—we conditionally vacate the panel's order of suspension and provide an additional 10 days from the date of this order for Attorney Snyder to provide a sincere letter of apology to this Court for the disrespectful comments directed to the Court in his letter of October 6, 1983, sent to Judge Van Sickle's secretary. The clerk is directed that if Snyder fails to comply with this request, our original order of suspension will be reinstated with the six month suspension to run from the date of the original order. The Clerk is further directed to send a copy of this order to each of

the lawyers who signed the petition for rehearing en banc and to the president and secretary of the Burleigh County Bar Association.

The petition for rehearing en banc is denied on the ground that the majority of judges in regular active service did not vote to grant the petition as required by Fed. R. App. P. 35.

BRIGHT and McMILLIAN, Circuit Judges, would grant the petition for rehearing en banc.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

ADDENDUM NO. 1

BICKLE, COLES AND SNYDER, CHARTERED
Attorneys at Law
219½ East Broadway
The Little Building
P.O. Box 2071
Bismarck, North Dakota 58502-2071

Gregory L. Bickle
James J. Coles
Robert J. Snyder

Telephone
(701) 258-1611

October 6, 1983

Helen Monteith
Federal Building
3rd Street & Rosser Avenue
Bismarck, ND 58501

Re: United States of America vs. Dennis Warren

Dear Helen:

I am in receipt of the letter of September 26, 1983, from the Eighth Circuit Court of Appeals, in which our latest attempt to justify our time and expenses for Dennis Warren has again been set back. This letter is for the purpose of responding to that letter.

In the first place, I am appalled by the amount of money which the federal court pays for indigent criminal defense work. The reason that so few attorneys in Bismarck accept this work is for that exact reason. We have, up to this point, still accepted the indigent appointments, because of a duty to our profession, and the fact that nobody else will do it.

Now, however, not only are we paid an amount of money which does not even cover our overhead, but we have to go through extreme gymnastics even to receive the puny amounts which the federal courts authorize for this work. We have sent you everything we have concerning our representation, and I am not sending you anything else. You can take it or leave it.

Further, I am extremely disgusted by the treatment of us by the Eighth Circuit in this case, and you are instructed to remove my name from the list of attorneys who will accept criminal indigent defense work. I have simply had it.

Thank you for your time and attention.

Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED

/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

APPENDIX C

BICKLE, COLES AND SNYDER, CHARTERED
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Very truly yours,

BICKLE, COLES AND SNYDER, CHARTERED

/s/ Robert J. Snyder
Robert J. Snyder
Attorney at Law

APPENDIX D

UNITED STATES COURT OF APPEALS
Eighth Circuit

Donald P. Lay
Chief Judge
P. O. Box 30908
St. Paul, Minnesota 55175

November 3, 1983

The Hon. Bruce M. Van Sickle
United States District Judge
P. O. Box 670
Bismarck, North Dakota 58501

Re: C1-83-4-01. U.S.A. v. Dennis Warren.

Dear Judge Van Sickle:

I am enclosing copies of recent correspondence of attorney Robert J. Snyder to your secretary, Helen Montieth, and from your secretary to my administrative assistant, June Boadwine. It is unfortunate that this matter now requires additional time, but because of the responses made by your secretary and Mr. Snyder, it is necessary for me to intervene.

I consider Mr. Snyder's letter to your secretary as being totally disrespectful to the federal courts and to the judicial system. It demonstrates a total lack of respect for the legal process and the courts.

The Criminal Justice Act was passed as a response to the inadequacy of a prior system which did not award any type of reimbursement of expenses or time spent by a lawyer. I'm confident it was true when you were in practice as it was when I represented indigents that the bar performed without any reimbursement of either expenses

or attorneys' fees. This pro bono work was considered to be a part of our professional responsibility. The CJA was never intended to provide a reasonable attorney fee, only to provide funds to cover overhead and expenses.

Regardless of an attorney's view as to whether he feels obligated to provide pro bono work, my concern now is related to the apparent refusal of the attorney involved in this case to comply with the Criminal Justice Act and the guidelines promulgated under it. In the original instance, Mr. Snyder failed to forward any time itemization, contrary to the statutory guidelines, and on that basis and based upon my direction to my administrative assistant, the claim for services was returned to you with the request that compliance be obtained. Mr. Snyder then itemized the amounts in dollars, but failed, as requested by the Administrative Office, to set forth the number of hours or portions of hours in each instance on his itemized schedule.

We were unable to ascertain whether he was charging time under his own fee schedule or that of the statute. In addition, he failed to itemize his out-of-pocket expenses on a separate sheet. Although these requirements may seem technical, under the Criminal Justice Act the federal government is dealing in millions of dollars and Congress requires proper itemization so that budgetary limitations may be accounted for in a proper manner.

As you know, processing these vouchers takes a good deal of time on my part, as well as on the part of every district judge who must approve them. If a district judge's staff is to assist, it is essential they understand the guidelines and require attorneys to comply with them. If a voucher is not properly submitted and checked by the district court, it requires a great deal of time on my part in getting ultimate approval of it by the Administrative Office. Volume

VII of the Guide to Judiciary Policies and Procedures contains the guidelines. However, when a lawyer becomes disrespectful and refuses to follow the guidelines and refuses to cooperate with the court, then it is a more significant problem.

Mr. Snyder indicates that he would like to have his name removed from the list of attorneys who will be appointed to represent indigent criminal defendants. As far as the court is concerned, I will honor that request and I instruct you to remove his name from the list of attorneys who will be appointed in criminal cases. However, in view of the letter that Mr. Snyder forwarded, I question whether he is worthy of practicing law in the federal courts on any matter. It is my intention to issue an order to show cause as to why he should not be suspended from practicing in any federal court in this circuit for a period of one year. This suspension, of course, will apply to his appearance in federal court in North Dakota. We will, of course, give Mr. Snyder an opportunity to respond before any final determination is made.

In view of Mr. Snyder's attitude and refusal to assist the court in processing this voucher under the guidelines, I am approving a fee for him only to the statutory limit and properly itemized expenses.

Before taking the steps noted above, I would appreciate your views on the matter.

Sincerely,

/s/ Donald P. Lay
Donald P. Lay

/j

Encls.

cc: Mr. Robert Snyder

Encls.

APPENDIX E

(Filed December 22, 1983)

UNITED STATES COURT OF APPEALS
for the Eighth Circuit

Re: ROBERT J. SNYDER) ORDER TO SHOW CAUSE

On October 6, 1983, Robert J. Snyder, a duly licensed attorney in the State of North Dakota, requested the United States District Court of the District of North Dakota to remove his name from the list of attorneys who will represent indigent criminal defendants. His refusal to defend criminal indigents appears to be based partly on his contention that the attorneys' fees allowable to court-appointed counsel under the Criminal Justice Act, 18 U.S.C. § 3006A, do not afford reasonable compensation. Mr. Snyder also has refused to comply with the guidelines and forms required by the Criminal Justice Act for payment of attorneys' fees.

On November 15, 1983, as Chief Judge of this court, I instructed United States District Judge Bruce M. Van Sickle to remove Mr. Snyder's name from the list of attorneys in North Dakota who are eligible to be appointed to defend indigents in criminal cases.

In *Williamson v. Vardeman*, 674 F.2d 1211, 1215 (8th Cir. 1982), this court recognized the inherent duty and obligation of a lawyer, as an officer of the court, to represent indigents without fee. This court relied, in part, *on United States v. Dillon*, 346 F.2d 633, 635-36 (9th Cir. 1965), *cert. denied*, 382 U.S. 978 (1966), wherein the court stated:

> An applicant for admission to practice law may justly be deemed to be aware of the traditions of the profession which he is joining, and to know that one

of these traditions is that a lawyer is an officer of the court obligated to represent indigents for little or no compensation upon court order. Thus, the lawyer has consented to, and assumed, this obligation and when he is called upon to fulfill it, he cannot contend that it is a "taking of his services." Cf. Kunhardt & Company, Inc. v. United States, 266 U.S. 537, 45 S.Ct. 158, 69 L.Ed. 428 (1925).

In Powell v. State of Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932), the Supreme Court held, in a capital case where the defendant was unable to employ counsel and was incapable of making his own defense adequately because of ignorance, etc., that it was the duty of the court to assign counsel for him, and stated at page 73, 53 S.Ct. page 65:

> "Attorneys are officers of the court, and are bound to render service when required by such an appointment."

346 F.2d at 635 (footnote omitted).

In view of Mr. Snyder's refusal to carry out his obligations as a practicing lawyer and as an officer of this court, he is HEREBY ORDERED TO SHOW CAUSE within thirty days of this Order as to why he should not be suspended from practice in the federal district court, as well as in the United States Court of Appeals for the Eighth Circuit, for such period of time as his refusal to serve continues. Pursuant to Rule 46 of the Federal Rules of Appellate Procedure, Mr. Snyder may request a hearing on his response before the full court. He shall file his response with the Clerk of the United States Court of Appeals for the Eighth Circuit in St. Paul, Minnesota.

IT IS SO ORDERED.

/s/ Donald P. Lay
Chief Judge

Dated December 20, 1983.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 84-8017

In the Matter of:) On Order to Show
Attorney Robert J. Snyder.) Cause

PETITION FOR REHEARING IN BANC

RULE 16(d) 8th CIR.R. REQUIRED STATEMENT

We express a belief, based on a reasoned and studied professional judgment, that this appeal raised the following questions of exceptional importance: (1) denial of due process, (2) failure to disqualify pursuant to 28 USC §455, (3) denial of First Amendment rights.

PETITION FOR REHEARING IN BANC

COME NOW the undersigned, on behalf of Robert J. Snyder and pursuant to Rules 35 and 40 of the Federal Rules of Appellate Procedure, and hereby respectfully petition the full court for a rehearing in banc for the purpose of addressing the order and judgment of suspension of Robert J. Snyder entered by the Eighth Circuit Court of Appeals on April 13, 1984.

The rehearing in banc is sought upon the following grounds.

I.

That the order of suspension is based upon matters which were not a part of the Order to Show Cause issued

by the Eighth Circuit Court of Appeals, dated December 20, 1984. Accordingly, Mr. Snyder has not been accorded due process which requires: (1) Notice, (2) Opportunity to be heard, and (3) A meaningful hearing on the matters which serve as a basis for the suspension.

II.

That the Order to Show Cause advised Mr. Snyder that, pursuant to Rule 46 of the Federal Rules of Appellate Procedure he could request a hearing on his response before the full court which request was made by Mr. Snyder but was denied by Chief Judge Lay. A Motion was filed by Robert J. Snyder requesting that Chief Judge Lay not sit on the panel, which motion was denied. The opinion ordering suspension was drafted by Chief Judge Lay. It is respectfully submitted that Chief Judge Lay should have recused himself from the hearing panel and any consideration of the matter because of the provisions of 28 U.S.C. §455.

III.

Suspension of Mr. Snyder, based upon the content of the letter dated October 6, 1983, to Helen Monteith, secretary to the Honorable Bruce M. Van Sickle would be in derogation and violation of Mr. Snyder's First Amendment rights.

ARGUMENT

This matter arises from a situation where Mr. Snyder was appointed to represent an indigent in the Southwestern Division in the District of North Dakota in 1983. Mr. Snyder submitted his vouchers for payment which were returned for additional information on several occasions by the Circuit Court. As a result of his difficulty regarding

submission of his vouchers, Mr. Snyder spoke with Helen F. Monteith who suggested to Mr. Snyder that he write a letter to her office stating his concerns regarding the frustration of counsel in representing indigent defendants and being compensated for it. (See Affidavit of Helen F. Monteith attached hereto as Exhibit A.) Helen F. Monteith then showed the letter to Judge Bruce M. Van Sickle and, at his direction, she sent it on to the Circuit Court. Judge Van Sickle did, in fact, review the letter and discussed the letter with Mr. Snyder. (See Judge Van Sickle Affidavit attached hereto as Exhibit B). Judge Van Sickle did not view the letter as one of disrespect for the court but rather one of a somewhat frustrated lawyer hoping that his comments might be viewed as a basis for some changes in the process. Judge Van Sickle and Helen F. Monteith both share in their affidavits that they did not regard the letter as one of disrespect for the court, or as showing a disrespect for the federal court system and both state that during the period of time that Mr. Snyder has been appearing before Judge Van Sickle he has always shown the highest respect to the court system and to Judge Van Sickle.

In any event, the letter dated October 6, 1983, which is a part of the court's record in this matter was sent to the Circuit Court of Appeals. On November 3, 1983, Chief Judge Lay addressed a letter to the Honorable Bruce M. Van Sickle referencing the letter Snyder wrote to Helen F. Monteith, which letter is also a part of the record in this case, which letter contained statements of Chief Judge Lay that:

> [I] consider Mr. Snyder's letter to your secretary as being totally disrespectful to the federal courts and to the judicial system. It demonstrates a total lack of respect for the legal process and the courts. . . .

The letter continued by stating:

> [I] question whether he is worthy of practicing law in the federal courts on any matter. It is my intention to issue an Order to Show Cause as to why he should not be suspended from practicing in any federal court in this district for a period of one year. This suspension, of course, will apply to his appearance in federal court in North Dakota. We will, of course, give Mr. Snyder an opportunity to respond before any final determination is made. . . .

Chief Judge Lay, on December 20, 1983, did issue an Order to Show Cause which Order to Show Cause specifically stated:

> [H]e is hereby ordered to show cause within thirty (30) days of this order as to why he should not be suspended from practice in the federal district court, as well as in the United States Court of Appeals for the Eighth Circuit, for such period of time as his refusal to serve continues. Pursuant to Rule 46 of the Federal Rules of Appellate Procedure, Mr. Snyder may request a hearing on his response before the full court.

The Order to Show Cause thus directed Mr. Snyder to show cause why he should not be suspended from the practice because of his refusal to serve as a lawyer representing indigents in the district of North Dakota. As a result of that specific directive, Mr. Snyder prepared a lengthy response which response included copies of the Criminal Justice Act for the District of North Dakota which had previously been approved by the Eighth Circuit Court of Appeals, showing that under the provisions of that act and its implementation that his stated refusal to serve as counsel for indigents from that time forward

was allowed by the plan and, in fact, the statistics indicated that approximately 200 of some 275 lawyers in the Southwestern District of North Dakota had also, for various reasons, chosen not to serve on the panel. Mr. Snyder also requested a hearing before the full court as he had been advised in the Order to Show Cause that he could do.

A hearing was scheduled, but not before the full court, but before a three judge panel which included Judge Heaney, Judge Arnold and Judge Lay. Mr. Snyder upon being advised that the panel included Chief Judge Lay did enter a demand that Chief Judge Lay recuse himself because of his involvement in the matter through letters to the federal judges in the District of North Dakota and, specifically, the letter of November 3, 1983, to the Honorable Bruce M. Van Sickle, portions of which have been quoted above.

The hearing was held in St. Paul on February 16, 1983, at which time and date Mr. Snyder appeared pro se but was accompanied by an attorney who was directed by the Burleigh County Bar Association to file a Resolution of the Burleigh County Bar Association with the court which is a part of the court's file in this matter. A copy of the Bar's Resolution is attached hereto and made a part hereof as Exhibit C.

The Return which was filed by Mr. Snyder was in direct response to the Order to Show Cause and explained the basis and reason that Mr. Snyder should not be suspended for having determined that he would not serve on the panel for indigent defendants. Nothing was included in the return regarding Mr. Snyder's guaranteed First Amendment rights of free speech, because the Order to Show Cause did not mention or direct that he show

cause why he should not be suspended because of the content of the letter to Helen Monteith, dated October 6, 1983.

At the hearing on February 6, 1984, the bulk of the discussion centered on the content of the letter to Helen Monteith, dated October 6, 1983. The panel did indicate that their review of the North Dakota District Plan indicated that some revision was required.

At the conclusion of the hearing, the panel advised Mr. Snyder that he would be suspended from the practice in the federal courts unless, within ten (10) days, he submitted a letter to the court indicating that: 1. He would agree to serve on the panel under a newly revised plan, and 2. That when so serving he would comply with the guidelines in effect for the submission of billings for his services, and 3. That he retract or apologize for the language contained in the October 6, 1983, letter to Helen Monteith.

Mr. Snyder has agreed to items 1 and 2 and has sent such a letter to the court; however, he has refused to retract or apologize for the remarks in the letter.

Accordingly, on April 13, 1984, Chief Judge Lay authored an opinion for the panel which states at page 6 thereof:

> We find that Robert Snyder shall be suspended from the practice of law in the federal courts of the Eighth Circuit for a period of six (6) months; thereafter Snyder should make application to both this court and the Federal District Court of North Dakota to be readmitted.

It is respectfully submitted that the Order of Suspension should not be entered for various reasons which have

been itemized above and which will be amplified upon hereafter.

In the first place, the Order to Show Cause specifically stated that he was to show cause why he should not be suspended from the practice "[F]or such period of time as his refusal to serve continues. . . ." In the opinion issued by the Circuit Court Panel, it is stated that Snyder was ordered to show cause why he should not be suspended from practice in the federal courts and the opinion states:

> Attorney Snyder has been cited:
>
> (1) For his refusal to continue to perform services in indigent cases under the Criminal Justice Act (CJA) 18 U.S.C. §3006A (1982); and
>
> (2) For his disrespectful refusal to comply with the guidelines under the CJA relating to the submission of expenses and attorney's fees.

It is apparent that the above quoted language in the Order of Suspension is vastly different than the directive in the Order to Show Cause. Additionally, it is clear from the language in the opinion that the basis for the court's ordering the suspension of Snyder was for his refusal to "Offer a retraction and sincere apology for his disrespectful remarks rendered in his letter of October 6th." (Page 3.) And, at page 6 of the opinion it is stated that "without hesitation we find Snyder's disrespectful statements as to this court's administration of CJA contumacious conduct." It then follows, in the next paragraph, that he is ordered suspended.

It is Snyder's position that he has been denied due process in that the Order to Show Cause was not directed to the language contained in the letter and, therefore, in his Return to the Order to Show Cause he made no

reference to it nor argument in respect to it. Had the Order to Show Cause stated that he was to show cause why he should not be suspended from practice because of the statements contained in the letter the Return to the Order to Show Cause would have referenced the First Amendment to the Constitution and the numerous decisions regarding freedom of speech.

Accordingly, it is respectfully submitted that Snyder has now been suspended because of the content of the letter without having had the due process of law because as to the content of the letter he has not been afforded: (1) Proper notice, (2) Opportunity to be heard, and (3) A meaningful hearing. He was not advised in the Order to Show Cause that the matters contained in the letter were to serve as the basis for a possible suspension and, therefore, he did not have an opportunity to appropriately respond.

Additionally, it is respectfully submitted that Chief Judge Lay should have recused himself in the consideration of this matter because of the provisions of 28 U.S.C. §455 which state in pertinent part as follows:

> Disqualification of justice, judge, magistrate or referee in bankruptcy.
>
> (a) Any justice, judge, magistrate, or referee in bankruptcy of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> a. Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; . . .

The language of that statute is also a part of Canon 3C. of the Model Rules of Professional Conduct and Code of Judicial Conduct which states in pertinent part as follows:

> (1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, included but not limited to instances where:
>
> (a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings; . . .

It is respectfully submitted that Judge Lay's initial involvement in the matter before the issuance of the Order to Show Cause does bring into play the provisions of 28 U.S.C. §455 because he did have personal knowledge of facts concerning the proceeding.

Snyder did request that Chief Judge Lay recuse himself, however, Chief Judge Lay did not recuse himself and, in fact, sat as the Chief Judge of the panel and, subsequently, wrote the opinion suspending Mr. Snyder for a period of six (6) months.

In Chief Judge Lay's letter to the Honorable Bruce M. Van Sickle of November 3, 1983, he stated that he was going to issue an Order to Show Cause why Snyder should not be suspended "[F]or a period of one year."

It is, therefore, respectfully submitted that Chief Judge Lay should have recused himself from any consideration of this matter and that his failure to do so is sufficient basis for a rehearing in banc and the subsequent dismissal of the proceeding against Mr. Snyder.

Additionally, it is respectfully submitted that the Order of Suspension should be set aside because to order his

suspension because of the language in the letter to Helen Monteith would violate his First Amendment rights.

It is apparent from the decision that the suspension of Mr. Snyder is entered not on the grounds set forth in the Order to Show Cause, but because of the language contained in the October 6, 1983, letter to Helen Monteith. It is respectfully submitted that, since that is the basis of suspension, it is necessary to address the First Amendment Freedom of Speech rights that lawyers and all other persons are entitled to under the First Amendment to the Constitution. In the October 6, 1983, letter all Mr. Snyder did was complain to the federal district court secretary about problems he had encountered in his representation of indigents in the court, which letter was written at the secretary's suggestion. The letter simply vents frustration of a practicing attorney towards a system which has not been working particularly well.

Additionally, and more importantly, it is respectfully submitted that, under the First Amendment, Mr. Snyder had the right to say what he said in the October 6th letter without fear of reprisal. The cases dealing with the subject of First Amendment rights make clear that truthful criticism is protected by the First Amendment, subject to regulation only to the extent that it presents a clear and imminent threat to the fair administration of justice or involves conduct disruptive of a judicial proceeding. See *Craig v. Harney*, 331 U.S. 367 (1947); *Pennekamp v. Florida*, 328 U.S. 331 (1946); *Bridges v. California*, 314 U.S. 352 (1940); and *Polk v. State Bar of Texas*, 374 F. Supp. 784 (N.D. Tex. 1974).

Regarding the constitutional standard applicable to the regulation of a lawyers extra judicial criticism of the judiciary, the Supreme Court in *Bridges* explained that clear

and present danger "[I]s a working principle that the substance of evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." (314 U.S. at 263). (See also: In re: Hinds, 449 A.2d 483 (N.J. 1983)).

A private letter written to the local federal district court judge's secretary simply does not rise to the level that it can be said to be an imminent threat to the fair administration of justice or disruptive of a judicial proceeding.

Therefore, it is respectfully requested that on the grounds and for the reasons above stated it is appropriate that a rehearing be held in the captioned action in banc.

Dated this 20th day of April, 1984.

Respectfully submitted,

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John C. Kapsner

EXHIBIT "A"

AFFIDAVIT

STATE OF NORTH DAKOTA)
) ss
COUNTY OF BURLEIGH)

I, Helen F. Monteith, being first duly sworn, state:

1. That Mr. Robert J. Snyder represented an indigent defendant before Judge Bruce M. Van Sickle in 1983, and experienced difficulty in the processing of his voucher.

2. Mr. Snyder called this office and told me of his difficulty. I suggested he write a letter to this office stating his concerns regarding the frustration of counsel in representing indigent defendants, and being compensated for it.

3. He sent a letter which I showed to Judge Van Sickle, and at the Judge's direction sent it on to the Circuit Court.

4. I have known Mr. Snyder for a number of years. He has always been willing to accept his share and more of the indigent defense cases in the Southwestern Division of the District of North Dakota, and I believe he did not intend to show disrespect for the federal court system.

Bismarck, North Dakota this 19th day of April, 1984.

/s/ Helen F. Monteith
Helen F. Monteith

Subscribed and sworn to before me this 19th day of April, 1984.

/s/ Jacquelin Beaudoin
Jacquelin Beaudoin, Notary Public
Burleigh County, North Dakota

My commission expires: 12/10/88
(Seal)

EXHIBIT "B"

AFFIDAVIT

I, Bruce M. Van Sickle, United States District Judge, District of North Dakota, state:

1. That Mr. Robert J. Snyder represented indigents before me on a number of occasions.

2. That in 1983 he was involved in representing an indigent defendant, and experienced problems in processing his voucher.

3. That Mr. Snyder sent my office a letter protesting his difficulties.

4. I discussed the letter with Mr. Snyder. My concern was the protest over the fee schedule, and his protest over the paper work required.

5. I did not view the letter as one of disrespect for the Court, but rather one of a somewhat frustrated lawyer hoping that his comments might be viewed as a basis for some changes in the process.

6. Mr. Snyder has appeared before me on a number of occasions and has always competently represented his client, and has shown the highest respect to the court system and to me.

Bismarck, North Dakota this 19th day of April, 1984.

/s/ Bruce M. Van Sickle
Bruce M. Van Sickle, Judge
United States District Court

EXHIBIT "C"

RESOLUTION

WHEREAS, Robert Snyder has been a member of the Burleigh County Bar Association since he and his two partners opened their practice in Bismarck, North Dakota, in 1977, following graduation from law school; and

WHEREAS, since that time Robert Snyder has developed his practice and enjoys the respect of the entire membership of the Burleigh County Bar Association, and is recognized as a hard-working, well-qualified, ethical attorney, who is a credit to the legal profession in Burleigh County and the State of North Dakota; and

WHEREAS, during the same period of time Robert Snyder has involved himself in community activities which are a credit to him individually, and also reflect positively on the legal profession in this community; and

WHEREAS, Robert Snyder has been on a panel of attorneys who are called upon to defend indigents in Federal District Court in the Southwestern Division of the District of North Dakota, and that between January, 1980 and December, 1983, out of 99 indigent appointments, Robert Snyder has personally accepted 8 of the appointments, and his two partners have accepted an additional 7 indigent appointments, for a total of 15 indigent appointments, or more than 15% of the appointments in all indigent cases handled in the Southwestern Division during the three year period; and

WHEREAS, there are approximately 276 licensed non-corporate and non-government private practitioners prac-

ticing law in the Southwestern Division of the District of North Dakota; and

WHEREAS, the Criminal Justice Act plan for the district of North Dakota presently in effect as approved by the Eighth Circuit Court of Appeals provides that the panel shall include lawyers who ". . . are competent to give adequate representation to parties under the Act, and are willing to serve." And,

WHEREAS, the panel of attorneys for the Southwestern Division of the District of North Dakota currently on file under the Act only has 87 of the approximately 276 licensed practitioners included thereon, which makes it clear that only approximately 31% of those licensed practitioners eligible for appointment have indicated that they ". . . are willing to serve". And,

WHEREAS, the Burleigh County Bar Association has been advised that Robert Snyder has requested that his name be removed from the Criminal Justice Act panel of attorneys, and that as a result of that request, he has been ordered to show cause in the Eighth Circuit Court of Appeals why he should not be suspended from practice in the Federal District Court in North Dakota as well as in the United States Court of Appeals for the Eighth Circuit for such period of time as his refusal to serve continues; and

WHEREAS, in March, 1982, at a meeting of the Federal Practice Committee, the Federal District Court for North Dakota appointed a subcommittee to review the problems with the Criminal Justice Act appointment system within the District of North Dakota; and

WHEREAS, the Burleigh County Bar Association recognizes and believes that the current system places an

undue burden upon some practitioners and other practitioners are not called upon in any manner for service to the indigents; and

WHEREAS, the record reflects that Robert Snyder and his lawfirm have accepted appointment to represent 15% of the cases where counsel have been appointed for indigents in the Southwestern District of the District of North Dakota between January, 1980 and December, 1983, the Burleigh County Bar Association believes that Robert Snyder has fulfilled in a more than satisfactory manner his obligations as a member of the Bar; and

WHEREAS, at least 69% of the licensed practitioners in the Southwestern District of the District of North Dakota have chosen not to serve as counsel for the indigents by not having their names included on the panel of lawyers available for appointment as allowed under the current Criminal Justice Act plan, and no disciplinary action has been commenced against any of said lawyers.

NOW, THEREFORE, BE IT RESOLVED that the Burleigh County Bar Association urges that the Eighth Circuit Court of Appeals not issue an order suspending Robert Snyder from practice in the Federal District Court for North Dakota and the Eighth Circuit Court of Appeals, because the Burleigh County Bar Association believes that Robert Snyder is a credit to the legal profession, and that the record above outlined reflects that he has shouldered more than his fair share of the cases involving indigent criminal defendants, and the Burleigh County Bar Association believes that the Criminal Justice Act plan should be reviewed and revised, and that the roll of attorneys should be revised and updated so that the burden and responsibility of defending indigents can be more evenly distributed among all members of the Bar.

Said Resolution to be filed with the Eighth Circuit Court of Appeals on behalf of Robert Snyder.

Dated this 15th day of February, 1984.

Burleigh County Bar Association

By /s/ Jo Wheeler Johnson
Jo Wheeler Johnson, President

Attest:

/s/ William Severin
William Severin, Secretary